

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

CHAD KUBINSKI

Plaintiff,

v.

**TUV RHEINLAND INDUSTRIAL
SOLUTIONS, INC. and
BUFFALO STAFFING, INC.**

Defendants.

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CIVIL ACTION NO: 1:16-CV-00051

Greer/Lee

**RESPONSE IN OPPOSITION TO TUV RHEINLAND INDUSTRIAL SOLUTIONS, INC.'S
MOTION TO DISMISS**

Plaintiff Chad Kubinski ("Plaintiff"), through counsel, pursuant *Fed. R. Civ. P.* 8, 9, 12(b)(6), and this Court's Order entered March 11, 2016 (Doc. 4) responds in opposition to the Motion to Dismiss filed by Defendant TUV Rheinland Industrial Solutions, Inc.'s ("TRIS") Motion to Dismiss (Doc. 10). For cause, TRIS did not confer with Plaintiff prior to filing that Motion.

TRIS's counsel contacted Plaintiff's counsel to inform him that he would be moving to dismiss the Complaint on March 11 and on March 21. At no point during these conversations did TRIS's counsel indicate that there were pleading deficiencies in the Complaint. TRIS did consent to Plaintiff filing an amended complaint; however, TRIS never told Plaintiff of the issues it would raise in its Motion to Dismiss. As such, Plaintiff could not correct those perceived deficiencies that TRIS knew it would raise in its Motion to Dismiss. Plaintiff then filed his Amended Complaint, and TRIS filed the instant Motion to Dismiss and certified that the parties conferred to determine whether an amendment could cure the deficient pleading. **At no point did TRIS ever actually engage in any semblance of a conference to point out specific purported deficiencies in Plaintiff's Complaint.** TRIS also asserts that it has no obligation to confer after the filing of the Amended Complaint, but again, Plaintiff had no notice of the perceived issues with his Complaint or his Amended Complaint.

Therefore, this Court should strike TRIS's motion and remove it from the docket due to TRIS's failure to abide by the Court's Order entered March 11, 2016.

Alternatively, Plaintiff has filed a Second Amended Complaint as of right pursuant to *Fed. R. Civ. P.* 15(a)(1)(B)—rendering Defendant's Motion to Dismiss moot on all counts.

DUNCAN, HATCHER, HIXSON & FLEENOR, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that the following individuals have been served a copy of the foregoing via the Court's electronic filing system or the United States mail, first-class, postage prepaid on this 10th day of May, 2016.

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/s/ Everett L. Hixson, III
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